

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

December 10, 2013 at 2:00 p.m.

1. [13-22801](#)-C-13 REX REYES MOTION TO MODIFY PLAN
JMC-2 Joseph M. Canning 10-11-13 [[35](#)
Thru #2

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 11, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d) (2), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

(1.) Debtors prior plan provided payments to Wells Fargo Home Mortgage by the Trustee as Class 1. Trustee has paid \$7,895.00 to Wells Fargo under the prior plan. The current plan does not authorize nor include payments to Wells Fargo.

(2.) Section 1.03 of Debtors plan proposes a term of 36 months. However, Trustee's calculations show the plan completing in 52 months, which exceeds the time allowed in Section 1.03 by 9 months.

December 10, 2013 at 2:00 p.m.

(3.) The plan is not currently feasible because it relies on a loan modification. The classification of Wells Fargo Home Mortgage depends on the court granting Debtor's Motion to Approve Loan Modification set for the same hearing date at this Motion to Modify.

Debtor's Response

Debtor responds to Trustee's Objection and seeks the court's permission to remedy the issues in the Order Confirming the First Modified Plan. Debtor alternatively will file a Second Modified Plan with conforming language.

Specifically, Debtor notes that the Objections all stem from not properly including authorization of payments to Wells Fargo that were included in the prior plan. Once this authorization is provided for, Debtor states it will resolve the discrepancy related to plan length.

The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The changes Debtor proposes to make concern the feasibility of the plan and are not merely clerical or procedural changes. To ensure the integrity of the plan the court will dismiss the current Motion to Modify without prejudice and permit Debtor to submit a Second Modified Plan including all changes required to create a feasible plan that will complete on schedule. This will also permit Debtor to incorporate the loan modification with Wells Fargo the court is set to approve at the hearing on December 10, 2013.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied without prejudice and the proposed Chapter 13 Plan is not confirmed.

2. [13-22801](#)-C-13 REX REYES
JMC-3 Joseph M. Canning

MOTION TO APPROVE LOAN
MODIFICATION
10-11-13 [[41](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on October 11, 2013. 28 days' notice is required; that requirement was met.

Final Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Approve Loan Modification is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

Movant Debtor requests that the court approve a modification of their mortgage with Wells Fargo Home Mortgage concerning real property commonly known as 137 Sand Dollar Drive, Vallejo, California. At the time of filing the case, the balance on the subject loan was \$287,792.48, with \$35,000 in pre-petition arrearage. The loan was a 30-year fixed with a maturity date of March 1, 2034. Monthly payments at the time of filing were \$1,579 (PITI).

The new loan payments will be in the amount of \$1,524.49 at an interest rate of 3.00% for years 1-5, 4% for year 6, 4.625% for years 7-35. The Modified mortgage balance is \$279,020.30 and the loan will have a maturity date of May 1, 2049. The modified loan will reduce Debtor's monthly mortgage expenses and cure all pre-petition arrearage. A copy of the loan modification agreement with Wells Fargo, containing its precise terms, is attached to the instant motion as Exhibit A (Dkt. 44).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification
filed by Debtor having been presented to the
court, and upon review of the pleadings, evidence,
arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Loan
Modification is granted.

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Local Rule 9014-1(f)(1) Motion - No Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors' Attorney and the Chapter 13 Trustee on November 1, 2013. 28 days' notice is required; that requirement was met.

Tentative Ruling: The Motion to Deem Timely a Late-Filed Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decisions is to deny the Motion to Deem Timely a Late-Filed Proof of Claim. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Pursuant to Fed. R. Bankr. P. 9006(b)(1), movant Creditor requests that the court deem timely a late-filed proof of claim.

Creditors John and Nancy Tuscano received a state court judgment awarding them \$41,997.72 in their favor against Debtors. Creditors received notice of Debtors' bankruptcy filing on April 29, 2013. Counsel for Creditors accidentally calendared the last day to file a proof of claim on October 23, 2013 when the proper deadline to file a claim was September 4, 2013. Once realizing the mistake, Counsel for Creditors filed a late proof of claim on October 21, 2013.

Discussion

Creditor moves under Fed. R. Bankr. P. 9006(b)(1), which provides that when an act is required to be done within a specified period, the court may, for cause and in its discretion, on motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect. Creditor argues why its late filing is excusable and not prejudicial to creditors.

A caveat included in FRBP 9006(b)(1) is the first line of the section, that states "[except as provided in paragraphs (2) and (3) of this subdivision" This caveat makes it so FRBP 9006(b)(1) does not apply if either 9006(b)(2) or 9006(b)(3) do apply.

Fed. R. Bankr. P. 9006(b)(2) does not apply as it concerns rules not relevant to untimely filing of a proof of claim. Fed. R. Bankr. P. 9006(b)(3); however, does apply, as it states the following:

The court may enlarge the time for taking action under Rules . . . 3002(c) . . . only to the extent and under the conditions stated in those rules.

Fed. R. Bankr. P. 3002(c) regulates the time for filing a proof of claim in a Chapter 13 individual's debt adjustment case. Therefore, Creditor is limited to any extensions or forgiveness provided in FRBP 3002(c) and cannot rely on FRBP 9006(b)(1) and excusable neglect to gain approval for the untimely filed proof of claim.

Fed. R. Bankr. P. 3002(c), provides that a proof of claim is timely filed if filed not later than 90 days after the first date set for the Meeting of Creditors. Here, the first date set for the Meeting of Creditors was June 6, 2013 (Dkt. 12) and 90 days after is September 4, 2013. The Rule provides six exceptions for untimely filed proofs of claim; none of which apply to Creditor.

Creditors filed their proof of claim late, on October 21, 2013, not in accordance with the time limits provided in FRBP 3002(c) and Creditors do not fall within an exception to the Rule permitting late filing. Therefore, the court will not grant Creditors' Motion and will not deem the untimely filed proof of claim as timely filed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Deem Timely a Late-Filed Proof of Claim filed by Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Deem Timely a Late-Filed Proof of Claim is denied.

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on November 14, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the motion to incur debt. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

A motion to incur debt is governed by Fed. R. Bankr. P. 4001(). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa 2009). Rule 4001() requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FRBP 4001()(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* At 4001()(1)(A).

Debtors filed their Chapter 13 petition on August 16, 2011 and confirmed a plan on November 28, 2011. Debtors seek permission to incur debt to purchase a single family residence located at 936 Cedar Crest Drive, Vacaville, California. The following terms are provided in Debtors' Motion:

1. Total loan amount is \$441,750.88.
2. The loan term is 30 years at 3.875% interest rate, fixed.
3. Monthly payment is approximately \$2,601.88 and includes insurance and taxes.
4. The Good Faith Estimate and Purchase Agreement are attached as Exhibits A and B. Dkt. 35.

Debtors will file amended Schedules I and J to reflect they have sufficient funds to afford the loan. Under the terms of the new loan, Debtors will be saving \$42.62 per month. Debtors anticipate submitting a minor modification to the Chapter 13 Trustee, requesting that their Chapter 13 payments increased by \$42.62 per month for the remaining plan length.

Debtors assert the purchase of the home is reasonable and necessary for the support of Debtors and their family.

Chapter 13 Trustee filed a statement of non-opposition.

The court is satisfied that Debtors met the burden of FRBP 4001(c) and will grant the motion to incur debt.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Incur Debt is granted.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 4, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtor is delinquent \$2,144.76 under the terms of the proposed modified plan. It appears Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6).
2. Debtor's modified plan proposes to reclassify Debtor's ongoing mortgage and arrears to Class 4 effective January 2014. The additional provisions of Debtor's modified plan states Debtor has paid \$43,713.99 to the Trustee through September 2013, paying the ongoing mortgage payment of \$1,973.69 per month, and paying a total of \$220.47 toward pre-petition arrears.

The proposed payments are not authorized. Trustee has paid \$40,977.72 in ongoing mortgage payments through October 2013, and \$815.76 in pre-petition arrears. The Trustee continues to pay the mortgage payments in the trial amount of \$1,738.14.

3. Debtor may have additional disposable income. Debtor's proposed modified plan, Motion, and Current Expenses, indicate that Debtor's mortgage payment is \$1,973.69. Under the Trial Loan Modification, Debtor's mortgage payments are actually \$1,738.14. Debtor may have an additional \$235.55 per month available for the benefit of unsecured creditors.

The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 14, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee and a creditor having filed oppositions, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtors' plan on the following grounds:

1. The Trustee contends that Debtors lack sufficient evidentiary support for their plan. Debtors argue that the amount unsecured creditors would receive in a hypothetical Chapter 7 is zero; however, Debtors have not furnished a detailed liquidation analysis. Debtors do have an Exhibit marked "Chapter 7 Reconciliation;" however, the exhibit is missing the page with the analysis.

Without the analysis, the court cannot determine whether the plan will pay sufficient amounts to unsecured creditors.

Debtors originally asserted their real property was worth \$280,000, but this assertion was made at the time of filing on December 6, 2011. The plan is effective "upon its confirmation" and no updated evidence has been presented regarding the present value of the property.

2. Trustee does not believe the plan is Debtors' best efforts, that Debtors can afford the payments proposed, or that the plan is proposed in good faith. 11 U.S.C. §§ 1325(b), 1325(a)(6), and 1325(a)(3).

Debtors' plan calls for a lump sum payment of \$24,5000 on or before the 60th month of the plan with not explanation as to the source of the payment. Debtors appear unable to make this payment based on Schedules I and J.

Wells Fargo Bank, N.A.'s Objection to Confirmation (Dkt. 170)

Creditor, Wells Fargo Bank, N.A., opposes confirmation of Debtors' plan for the following:

On November 5, 2013, Debtors prevailed in their adversary proceeding to avoid the lien of Wells Fargo in the amount of \$222,593.65.

Creditor asserts that Debtors' plan does not satisfy the Best Interest of Creditors Test. 11 U.S.C. § 1325(a)(4). Section 1325(a)(4) requires Debtors to propose a plan that pays unsecured creditors at least the amount they would be paid in a Chapter 7 liquidation.

Wells Fargo argues that Debtor's residence located at 815 Braddock Court, Davis, California has an appraised value of \$417,000 and is subject only to a lien secured by a first deed of trust in the amount of \$221,320.62. This leaves equity available to unsecured creditors in the amount of \$200,712.00, which Debtors have not provided for in their Fourth Amended Plan. In support of the value of the property, Wells Fargo submitted a verified appraisal as Exhibits A and B (Dkt. 171).

Debtors have not adjusted their proposed payment since the avoidance of the \$222,593.65 lien of Wells Fargo.

Wells Fargo objects to Debtors' valuation of their residence in any amount less than \$417,000.00.

Wells Fargo further objects to Debtors' Plan in that once the value of Wells Fargo's avoided lien has been properly scheduled for repayment, Debtors cannot feasibly complete their Plan as proposed.

Debtors' Response

Debtors respond to the oppositions to confirmation. Debtor asserts that the plan does pass chapter 7 liquidation based on an assessed value of the house at \$280,000. Debtor argues that the "effective date" of the plan is December 6, 2011, the filing date and that Wells Fargo presented no evidence as to the value of the property on that date.

Debtors argue that their lay opinion valuation of \$280,000 is appropriate permits the plan to pass Chapter 7 liquidation.

Debtors respond to the Trustee's issue concerning the lump sum payment and state that the amount will be drawn from a future refinance of their real property.

If this motion is not granted, Debtors request six months to resolve the remaining issues and confirm a plan.

Discussion

There are various unresolved issues concerning Debtors' plan. Debtors current proposed plan was drafted and set for hearing before resolution of an adversary hearing that would have a substantial impact on Debtors' plan. The resolution of the adversary proceeding, alone, supports submission of a modified plan based on how the result affects Debtors' position.

The ongoing battle between Debtors and Wells Fargo over the proper value of the home requires resolution as it impacts the plan term, feasibility, and Best Interest of Creditors test. Pursuant to 11 U.S.C. § 1325(a)(4), the Plan must pass Chapter 7 liquidation as of the effective date of the plan. Furthermore, 11 U.S.C. § 1325(a)(5)(B)(ii) provides that value of property to be distributed under the plan should be made as of the effective date. The plan is effective upon its confirmation and the confirmation date is the effective date. The effective date is not the date of filing, as asserted by Debtor.

The court is also skeptical of the plan relying on a lump sum payment to be drawn from a future refinance. Many unforeseen factors and outside issues could impact the reliability of this projection. Debtors' reliance on refinance undermines the court's confidence in the feasibility of the Plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. The Debtor requested six months to resolve these issue and propose a Fifth Amended Plan. As of the date of this hearing, the case will have been pending for two years without a confirmed plan. The court is aware that the case involved certain complexities, including the recently resolved adversary hearing; however, the court is hopeful that counsel can work efficiently to resolve the remaining issues and timely propose a confirmable plan.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

7. [13-33811](#)-C-13 REDEMPTA TUMBAGA
MET-1 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
11-23-13 [[16](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 23, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$15,675.00. No appearance required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2010 Honda Accord LX. The Debtor seeks to value the property at a replacement value of \$15,675.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank* (*In re Enewally*), 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2009, more than 910 days prior to the filing of the petition, with a balance of approximately \$22,438.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$15,675.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Americredit Financial Service, Inc. secured by a 2010 Honda Accord LX, is determined to be a secured claim in the amount of \$15,675.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$15,675 and is encumbered by liens securing claims which exceed the value of the Property.

8. [13-32612](#)-C-13 WARREN JACKSON
MDE-1 Scott J. Sagaria
Thru #10

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
10-16-13 [[15](#)]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 13 Trustee, and US Trustee on October 16, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, Deutsche Bank National Trust Company, opposes confirmation of the Plan for the following reasons:

1. Creditor filed a proof of claim in the amount of \$177,182.62, including arrearage in the amount of \$13,986.15. The claim is secured by real property commonly known as 1967 Woodglen Lane #3, Vacaville, California. Claim No. 3.
2. Debtor's plan does not provide for the curing of the default on Creditor's claim as required under 11 U.S.C. § 1322(b) (5). The plan states Debtor provided for arrears in the amount of \$6,000.00; however, that leaves \$7,986.15 remaining out of \$13,986.15.

The court's decision to deny confirmation. A review of the Plan support Creditor's position and Debtor should prepare a modified plan to address the arrears due under Creditor's claim.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on November 7, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor is \$1,200.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,200.00 is due on November 25, 2013. Debtor has paid \$0.00 into the plan to date.
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
3. The plan relies on a Motion to Value the secured claim of Union Bank of California set for hearing on December 10, 2013. If the Motion is not granted, Debtor's plan is not feasible.
4. The plan will not complete within 60 months as required by 11 U.S.C. § 1322(d) due to the mortgage arrears claim filed by Deutsche Bank National Trust Company.
5. Debtor's Schedule I is not accurate. Debtor's occupation is listed as a Driver for Kelly Services; however, Debtor testified at the First Meeting of Creditors that he has obtained new employment.
6. Debtor's Statement of Financial affairs lists not income for the last two years and year to date. A review of Debtor's 2012 tax return shows unemployment income and wage income.

Even if the Motion to Value the secured claim of Union Bank is

granted, the remaining issues highlighted by the Trustee require resolution before this plan may be confirmed. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 28, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1967 Woodglen Lane #3, Vacaville, California. The Debtor seeks to value the property at a fair market value of \$84,700 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$167,645.00. Union Bank of California's second deed of trust secures a loan with a balance of approximately \$49,945.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Union Bank of California secured by a second deed of trust recorded against the real property commonly known as 1967 Woodglen Lane #3, Vacaville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$84,700.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on November 12, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor's plan does not provide all of Debtors' projected disposable income for the applicable commitment period. 11 U.S.C. § 1325(b). Debtor takes deductions of \$270.00 and \$621.14 on Schedule I for "401K" and Trustee questions whether these are reasonably necessary for the maintenance and support of Debtors where Debtors admitted these were 401K loans and Debtors' pay stubs reflect deductions as "401K Repay."

Debtor has not disclosed the 401K loans, the amount of the loans, or when they will be repaid. Plan payments do not increase after the loans are repaid and Debtors have not presented evidence to show by the repayment of the loans are reasonable necessary.

2. Debtors' cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claim of JP Morgan Chase Bank, N.A. in Class 2 but has not filed a Motion to Value.
3. The plan does not appear as Debtors' best effort under 11 U.S.C. § 1325(b). Debtors' 2012 tax return shows a refund of

\$4,897.00; however, Debtors do not propose to pay any future refunds into their Plan or adjust their withholdings.

4. The Additional Provisions of the Plan state that the Additional Provisions are not appended to this plan; however, the Additional Provisions do exist in Sections 6.01 and 6.02.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation because it appears Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The expenses listed on Schedule J do not appear to be sufficient for the maintenance and support of Debtor or Debtor's dependants. Debtor filed an Amended Schedule J on October 9, 2013, and made the following changes for a family of four:

Food: decreased from \$480.00 to \$400.00
Clothing: decreased from \$50.00 to \$37.62
Laundry: decreased from \$50.00 to \$40.00
Transportation: decreased from \$360.00 to \$320.00
Recreation: decreased from \$10.00 to \$0.00
Charity: decreased from \$12.00 to \$0.00

Debtor is under the median income and proposes payments of \$2,291.00 for 20 months, then \$2,455.38 for 40 months with a 0% dividend to unsecured creditors.

Additional Provisions of Debtor's plan indicate that future income tax refunds during the life of the plan in excess of \$2000.00 will be remitted to the Trustee for pro rata payments to unsecured creditors. Debtor previously admitted at the Meeting of Creditors that his 2012 tax refund was \$11,698.00. Debtor has not addressed when he received the last tax refund or how Debtor will afford plan payments until such time as their receive additional funds from their next tax refund.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

13. [13-32814](#)-C-13 JESSIE PAJKOS-GARDNER AND OBJECTION TO CONFIRMATION OF
NLE-1 CRYSTAL PAJKOS PLAN BY DAVID CUSICK
Mikalah R. Liviakis 11-7-13 [[19](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on November 7, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor is \$445.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$445.00 is due on November 25, 2013. Debtor has paid \$0.00 into the plan to date.
2. The plan will not complete within 60 months, as required by 11 U.S.C. § 1322(d). The plan will take 79 months to pay the total secured and priority debts plus Trustee compensation and attorney fees, totaling \$34,851.78. Debtor proposes payments of \$445.00 for 60 months, which amounts to a total of \$26,700.00 over the life of the plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

14. [13-26421](#)-C-13 SHARON BORDEN
NLE-3 Deepak S. Parwatikar

CONTINUED MOTION TO DISGORGE
ATTORNEY FEES
7-29-13 [[30](#)]

CASE DISMISSED 9/5/13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Debtor, Debtor's Attorney, and Office of the United States Trustee on July 29, 2013. 28 days' notice is required. That requirement was met.

No Tentative Ruling: The Motion to Disgorge Attorney Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Previous Hearing

At the hearing held September 10, 2013, the court continued the hearing on the Motion to Disgorge Fees to allow the parties to conduct discovery. No additional documents have been uploaded on the court's docket. The court will entertain counsel's arguments at the hearing on this matter.

Chapter 13 Trustee Motion to Disgorge Fees

The Chapter 13 Trustee seeks to disgorge attorney fees in this case against Debtor's counsel, Deepak Parwatikar, who has represented Debtor in the current case.

Debtor did not adequately disclose payment of attorney fees in Debtor's Plan, Rights and Responsibilities, and the Attorney Disclosure of Compensation. These documents indicate that total fees of \$3,000.00 have been charged in this case, and \$1,000.00 was paid by Debtor to Pinnacle Law Center with \$2,000.00 to be paid through the plan. According to Trustee, at the First Meeting of Creditors, Debtor testified that she already paid her attorney \$4,000.00 in connection with loan modification assistance.

At the first meeting of creditors, Debtor's counsel of record did not appear. Instead, attorney Ronald Burns appeared to represent Debtor.

Debtor's counsel was obligated to attend the meeting of creditors, as provided in Rights and Responsibilities and numerous other deficiencies exist in the plan and in the case, from the period of inception. The deficiencies include not filing a spousal waiver, tax returns or pay stubs,

December 10, 2013 at 2:00 p.m.

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and a plan that calls for payments of \$501.00 per month while also calling for Trustee to make ongoing mortgage payments of \$1,479.00 per month.

Trustee asks the court to grant an Order disgorging attorney fees in the amount of \$1,000.00 in this case which was pre-paid by Debtor.

Debtor's Response

Debtor and his counsel filed a response to this motion. First, Debtor states the deficiencies cited by Trustee have been cured. On July 20, 2013, Debtor submitted an amended plan to cure the feasibility issues raised by Trustee. Trustee has not filed an objection to the amended plan. Debtor submitted the spousal waiver on July 30, 2013. Debtor states she submitted to Trustee the 2012 tax return extension form, pay advances, and proof of delinquent plan payments in the amount of \$1,002.00.

Debtor states that Trustee's belief that Debtor's attorney did not disclose all the fees received in connection with Debtor's bankruptcy case is not accurate. According to Debtor, and attached declarations of Debtor and Debtor's attorney, at the First Meeting of Creditors, Debtor confused Real Estate Law Center, P.C., with Pinnacle Law Center, P.C. Debtor was referred to Pinnacle Law Center for bankruptcy filing services by Real Estate Law Center, which Debtor retained for a different matter outside the scope of bankruptcy. Debtor's attorney is not a member of Real Estate Law Center and has received \$1,000.00 in attorney's fees prior to filing and expects \$2,000.00 through Debtor's plan.

Finally, Debtor points out that the Rights and Responsibilities do not require the counsel of record to attend the Meeting of Creditors and notes that Debtor was represented by a California licensed attorney.

Pursuant to 11 U.S.C. § 329, the court has authority to order an attorney to disgorge excessive fees. *In re Zepecki*, 258 B.R. 719 (B.A.P. 8th Cir. 2001). Section 329(b) provides that if compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive to the entity that made such payment. Compensation may be reduced if the court finds that the work done was of poor quality. *Hale v. U.S. Trustee*, 509 F.3d 1139 (9th Cir. 2007).

At the hearing on the motion set for August 27, 2013, the court continued the matter until September 10, 2013. As part of the continuation, Counsel for Debtor was required to file a 2016(b) Statement with the court for attorney Robert Burns by the end of the day on August 27, 2013. The Chapter 13 Trustee was given a deadline of September 5, 2013 to file a supplemental brief in support of his motion. Debtor's response is set to be due on September 9, 2013.

2016(b) Statement for Attorney Robert Burns

As part of the continuance, counsel for Debtor was required to file a 2016(b) statement for attorney Ronald Burns by the end of the day on August 27, 2013. No such statement was filed with the court.

In lieu of a 2016(b) statement for Robert Burns, Debtor's counsel filed a "Disclosure of Compensation of Attorney for Debtor" (Dkt. 60) signed by Deepak S. Parwatikar and a "Declaration of Deepak S. Parwatikate in

Support of Disclosure of Compensation of Attorney for Debtor" (Dkt. 61). In the declaration, counsel states he paid Attorneys on Demand \$150.00 to have Ronald Burns appear at the 341(a) Meeting of Creditors. Counsel attached receipt of payment to Attorneys on Demand as exhibit A to his declaration.

Trustee's Supplemental Declaration in Support of Motion to Disgorge

The Chapter 13 Trustee filed a supplemental declaration in support of his Motion to Disgorge attorneys fees and asserts the following:

(1.) Debtor's counsel did not file a 2016(B) statement for Ronald Burns with the court. This inaction, taken into consideration with the content of the documents counsel for Debtor did file with the court, leaves Trustee concerned that fees in this case were shared with non-attorneys. There is no evidence to show that Attorneys on Demand is owned and operated by an attorney.

(2.) Mr. Parwatikar filed a response to Trustee's Motion to Disgorge, stating that Debtor was referred to Pinnacle Law Center, P.C., to handle her bankruptcy filing by another firm, Real Estate Law Center, P.C. and at the 341(a) Meeting, when Debtor stated she had already paid Pinnacle \$4,000.00, she was mistaken, as that payment was to Real Estate Law Center and not Pinnacle. Mr. Parwatikar also filed a declaration in response to Trustee's Motion to Disgorge. In the declaration, he states that at the 341(a) Meeting of Creditors that he is not a member or associate of Real Estate Law Center, P.C. (Dkt. 42, Para. 6, Pg. 2). Trustee presented the following information for the court to consider in light of Mr. Parwatikar's claim that Real Estate Law Center and Pinnacle Law Center are separate entities and he is not associated with Real Estate Law Center:

(a.) Ripoff Report, listing Real Estate Law Center, P.C., with Mr. Parwatikar's name mentioned in connection with a scam complaint. (Exh. A). The same documents connects Mr. Parwatikar with Balanced Legal Group and Legal Justice Law Center. Mr. Parwatikar's profile on the California Bar Website lists his address as "The Balanced Legal Group." (Exh. B).

(b.) FindLaw listing for a profile updated on October 5, 2012 for Deepak Parwatikar, Real Estate Law Center, P.C., 695 South Vermont Avenue, Los Angeles, California. The address is almost identical to the address on file with the court for Pinnacle Law Center, with the difference being the Suite numbers. (Exh. C).

(c.) Ripoff Report, Complaint of Legal Justice Law Center, connecting Mr. Parwatikar to a scam. (Exh. E).

(d.) Real Estate Law Center Contract Review article mentioning a connection between Real Estate Law Center and Pinnacle Law Center and possible sharing of fees for referrals. (Exh. F).

(3.) At the hearing on Trustee's Motion to Disgorge, attorney Tala Rezai appeared and stated multiple times she was an associate for Pinnacle Law Center. A California Bar website search for Tala Rezai revealed an address of 5505 Newcastle Lane, Calabasas, California

(Exh. G) .

(4.) On the website of Real Estate Law Center, P.C., Tala Rezai is listed third on the Law Center's list of attorneys. (Exh. H). The credentials match those of the Tala Rezai reported to the California Bar. An article included as Exh. D mentions Tala Rezai in connection with Real Estate Law Center.

Trustee is concerned with the conduct of counsel and for Debtor in this case. The veracity of Mr. Parwatikar's declaration is undermined by the documents presented, as are the claims of Ms. Rezai. The Trustee questions what other information may be false, misleading, or less than valid in Debtor's petition and schedules.

Dismissal

On September 5, 2013, the court entered an order dismissing Debtor's Chapter 13 case. (Dkt. 75). Jurisdiction is reserved over the Motion to Disgorge Attorney's Fees.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Disgorge Attorney's Fees filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is -----.

15. [13-32123](#)-C-13 REMIGIO/JEANNIE PINGUL MOTION TO VALUE COLLATERAL OF
RLC-1 Stephen M. Reynolds BANK OF AMERICA, N.A.
Thru #16 10-14-13 [[15](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 14, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1019 Freedom Drive, Suisun City, California. The Debtor seeks to value the property at a fair market value of \$240,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$421,896.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$105,510.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 1019 Freedom Drive, Suisun City, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$240,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

16. [13-32123](#)-C-13 REMIGIO/JEANNIE PINGUL
TSB-1 Stephen M. Reynolds

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
CUSICK
10-30-13 [[20](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on October 30, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision overrule the Objection to Confirmation. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Prior Hearing

On November 19, 2013, the court held its first hearing on the Chapter 13 Trustee's Objection to Confirmation. At the prior hearing, the court continued the matter because it was based on a pending Motion to Value set to be heard on December 10, 2013.

Chapter 13 Trustee Objection

The Chapter 13 Trustee opposed confirmation of the Plan on the basis that Debtors' Plan relied on a pending motion, and therefore Debtors could afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' Plan relied on the Motion to Value the secured claim of Bank of America, N.A., RLC-1, which is set for hearing on December 10, 2013.

The court is set to grant Debtors' Motion to Value the secured claim of Bank of America, N.A. on December 10, 2013 and; therefore, Trustee's Objection is resolved and overruled.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled.

17. [11-41824](#)-C-13 FRIEDA ZACHARY
CAH-5 C. Anthony Hughes

MOTION TO TRADE IN CURRENT
VEHICLE AND/OR MOTION TO INCUR
DEBT
11-7-13 [[62](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on November 7, 2013. 28 days' notice is required; that requirement was met.

Tentative Ruling: The Motion to Trade in Current Vehicle and/or Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Trustee and a creditor having filed oppositions, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Trade in Current Vehicle and/or Incur Debt. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

A motion to incur debt is governed by Fed. R. Bankr. P. 4001(). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa 2009). Rule 4001() requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FRBP 4001()(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* At 4001()(1)(A).

Movant Debtor seeks approval to purchase a 2012 Chrysler 300 because the current vehicle disclosed on Schedule B, a 2003 Ford Thunderbird, is not mechanically sound and requires repairs exceeding the value of the vehicle. Debtor seeks to trade-in the 2003 Ford Thunderbird which will provide credit for the purchase of the 2012 Chrysler 300 in the amount of \$7,000.00.

The following terms of proposed credit agreement are provided in Debtor's Motion:

1. The total purchase price, after trade-in, fees, and taxes is \$35,069.76.
2. The interest rate is 11.99%
3. The monthly payment is \$399.58 for 72 months.
4. Exhibit A contains a copy of the purchase agreement.

Debtor submitted projected amended Schedules I and J reflecting an increase in income of \$400.00 in the form of contribution from Debtor's daughter and an increase in expenses of \$400.00 in the form of a car payment.

Chapter 13 Trustee Opposition

The Chapter 13 Trustee opposes Debtor's Motion on the grounds that it is not in the best interest of Debtor or the estate. The Trustee asserts that the actual value of a 2012 Chrysler 200 is \$20,094 according to the Kelley Blue Book. This amount is significantly less than the actual purchase price of the vehicle provided by Debtor that accounts for the trade-in value of the 2003 Ford Thunderbird. Furthermore, Trustee argues the interest rate of 11.99% is too high. Debtor has not shown that she has "shopped around" to compare purchase prices for the vehicle.

The 2003 Ford Thunderbird is currently being paid in Class 2 of the plan, with the current balance owed on the vehicle being approximately \$1,162.92. Debtor does not state how the vehicle will be paid off, whether the lender is aware there is a balance owed on the vehicle, or whether the Debtor intends to propose an amended plan to remove the treatment of the Thunderbird in the plan.

Debtor has not filed a declaration from her daughter supporting the claim that she will be contributing \$400.00 per month to Debtor's income. Trustee is not confident Debtor can afford this loan.

Debtor has not sufficiently demonstrated the extension of credit is necessary. Debtor presented no evidence of what is mechanically wrong with the Thunderbird, the costs of repairs, or the value of the vehicle to substantiate the claim that the cost of repair exceeds the value of the car.

Discussion

The court is not satisfied that Debtor has adequately addressed the reasonableness of incurring debt to purchase this vehicle. Debtor claims the cost of repair to the Thunderbird exceeds the value of the vehicle; however, Debtor provides no evidence of the costs of repair or of the value of the vehicle. The court cannot rely on mere assertions in a Motion when making a determination of reasonableness.

Debtor does not state why or how the court can find that a 11.99% interest rate is reasonable. Debtor does not address any alternative vehicles she could purchase with the trade-in value from the Thunderbird and what a smaller amount to finance may cost.

Debtor has not shown grounds for the court to approve the motion. The court is concerned that Debtor is entering into a loan agreement she cannot afford. Debtor's Motion states that Debtor can afford the car payment of \$399.58 because Debtor's daughter is moving in with Debtor and will be contributing \$400.00 to Debtor's household. There is no historical guarantee that this income stream will be steady and consistent. Debtor does not address how she would cover the car payment if her daughter were to move out before the 72 month payment term is complete. The court shares the Trustee's concerns regarding the feasibility of Debtor's plan if Debtor is to incur this debt.

The Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Trade in Current Vehicle and/or Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Trade in Current Vehicle and/or Incur Debt is denied without prejudice.

18. [11-46827](#)-C-13 UBONG INYANG
PGM-3 Peter G. Macaluso

CONTINUED OBJECTION TO NOTICE
OF POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
3-7-13 [[57](#)]

Local Rule 3007-1(b) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor, and Office of the United States Trustee on March 7, 2013. By the court's calculation, 47 days' notice was provided.

No Tentative Ruling: This Objection to a Notice of Post-Petition Mortgage Fees, Expenses and Charges has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1) and Rule 3007-1(d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following ruling:

Prior Hearings

On August 6, 2013, the court set this matter for status hearing on September 10, 2013. At the hearing on September 10, 2013, the court continued the hearing on the Objection to December 10, 2013, to allow the parties to negotiate and document a resolution of the issues.

No evidence of a resolution between the parties is present on the docket. The court will hear the parties on the matter at the hearing on December 10, 2013.

Debtor's Objection

Debtor objects to a Notice of Post-Petition Mortgage Fees, Expenses and Charges filed by creditor GMAC Mortgage, LLC ("GMAC") filed on May 29, 2012, in the amount of \$525. GMAC has asserted a claim in this case, listed as Claim No. 9 in the court's official registry. The gravamen of the debtor's argument is that the Proof of Claim and the Notice at issue are defective because the signatory did not identify himself as either the creditor or the creditor's authorized agent, but instead simply signed the Proof of Claim as "Bryan Fairman, Attorney."

The Notice of Post-Petition Mortgage Fees, Expenses and Charges includes charges for attorney fees for a "pay charge letter" and a "fee notice letter" in the amount of \$100 and proof of claim fees in the amount of \$425. The debtor asserts that these attorney fees are unreasonable and should be disallowed.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been

December 10, 2013 at 2:00 p.m.

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filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Debtor contends that under the plain language of Federal Rule of Bankruptcy Procedure 3002.1(d), the type of Notice at issue here is not subject to the prima facie presumption of validity afforded to Proofs of Claim under Federal Rule of Bankruptcy Procedure 3001(f). GMAC, Debtor argues, has made no showing to substantiate the validity of the expenses asserted in this Notice of Post-Petition Mortgage Fees, Expenses and Charges. Absent a presumption of validity, GMAC has the burden of showing the reasonableness of its fee claim. *Atwood v. Chase Manhattan Mortgage Co. (In re Atwood)*, 293 B.R. 227, 233 (9th Cir. B.A.P. 2003). Since, Debtor contends, GMAC has the affirmative burden of showing the reasonableness of its claim, Debtor need only point out the absence of such a showing in order to invalidate it.

Creditor's Response

Respondent creditor, through its servicing agent Green Tree Servicing, LLC, files the following response. Creditor states that pursuant to Federal Rule of Bankruptcy Procedure 3002.1, they filed a Notice of Post-Petition Mortgage Fees, Expenses and Charges on May 29, 2012, substantially as it is described by the debtor in the debtor's motion papers.

Creditor's Attorney states with respect to the issue of not having identified itself as either the creditor or the creditor's authorized agent on the Notice that it did not do so because, as the creditor's attorney, neither of those boxes adequately reflected Pite Duncan, LLP's relationship with the creditor. Nevertheless, Respondent contends, it is quite clear who the Notice was from and what Mr. Fairman's relationship to the creditor was.

Further, respondent argues that the attorneys' fees included in the Notice were reasonable. Respondent argues at some length that the fees asserted were reasonable in light of the criteria laid down by the Ninth Circuit in *LaFarge Conseils et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1341-42 (9th Cir. 1986). The issue, then, really, is whether Respondent provided sufficient evidence in the original Notice that the fees asserted were reasonable. On this point, Respondent notes that Debtor did not ever object to GMAC's Proof of Claim. Respondent further argues that Rule 3002.1(c) and Rule 3002.1(d) do not require additional exhibits or evidence to be submitted alongside the Notice, only that the notice shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim.

The issue, then, is whether the respondent creditor needed to support the Notice it filed under Rule 3002.1 with authenticated, admissible evidence. The Notice at issue, filed on May 29, 2012, and viewable in the court's docket as a separate document in between Item No. 45 and Item No. 46, does appear to include invoices and documents which purport to show the reasonableness of the fees asserted. Nevertheless, the issue is whether that

is sufficient to allow the attorney fees the debtor now challenges to withstand that challenge in light of the fact that Federal Rule of Bankruptcy Procedure states quite clearly that this Notice is not subject to the prima facie presumption of validity of Rule 3001(f). There is no evidence asserting the reasonableness of these fees in the form of a declaration of admissible evidence, verified under penalty of perjury in accordance with 28 U.S.C. §1746. Absent a challenge from the debtor, this Notice would, it appears, comply with the requirements of Rule 3002.1. But in light of this challenge, the reasonableness of the asserted fees is not a matter that is settled beyond dispute by the evidence currently in the court's docket. The matter must be set for an evidentiary hearing.

The court shall issue a scheduling order substantially in the following form holding that:

The Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges filed in this case by Debtor having been presented to the court, and upon review of the pleadings, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection is --
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Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 15, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). A creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, the Internal Revenue Service, opposes confirmation of Debtor's plan of reorganization. The IRS is the holder of a secured claim in the amount of \$17,930.00. The IRS also holds a priority claim in the amount of \$41,517.34 and a general unsecured claim in the amount of \$210,454.72.

Debtors have not filed timely returns for several years and the IRS was forced to determine its income tax liabilities under Substitute for Return Procedures. Recently, Debtors filed returns for some of the years listed on the proof of claim.

Debtors' plan provides adequately for the IRS's secured and priority unsecured claims. Debtors only recently filed returns for several tax years, which are listed as unsecured general claims. No payments are provided for unsecured creditors. The unsecured claims for tax and interest on the tax for years 2003, 2004, 2007, 2008, 2009, and 2010 are excepted from discharge pursuant to 11 U.S.C. § 1328(a)(2) and 11 U.S.C. § 523(a)(1)(B).

The plan should clarify that the unsecured tax claims for the years listed above are excepted from discharge and they will be provided for. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on November 8, 2013. 28 days' notice is required; that requirement was met.

Final Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Approve Loan Modification is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

Movant Debtor requests that the court approve a modification of their mortgage with Wells Fargo Home Mortgage concerning real property commonly known as 5915 Bamford Drive, Sacramento, California. The new loan payments will be in the amount of \$249.69 per month at an interest rate of 5.00% for a duration of 433 months. Debtor will also make a monthly escrow payment of \$201.26. The new principal balance of the loan will be reduced by \$76,800.00, to \$50,926.99. A copy of the loan modification agreement with Wells Fargo Home Mortgage, containing its precise terms, is attached to the instant motion as Exhibit A (Docket Item No. 67).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Loan Modification is granted.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 29, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on October 29, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on October 9, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 1, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13
Plan filed by the Debtors having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion is
granted, Debtors' Chapter 13 Plan filed on November
1, 2013 is confirmed, and counsel for the Debtors
shall prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order to the
Chapter 13 Trustee for approval as to form, and if
so approved, the Chapter 13 Trustee will submit the
proposed order to the court.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on November 12, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtors' case was converted from Chapter 7 to Chapter 13 on September 30, 2013. The Chapter 7 was filed on June 30, 2013. Debtor listed the Class 1 on-going mortgage payment to be paid by Trustee commencing on October 25, 2013; however, Trustee is not certain if Debtor made the Class 1 on-going mortgage payment from July 2013 through September 2013.
2. Debtor is \$2,433.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,433.00 is due on November 25, 2013. Debtor has paid \$0.00 into the plan to date.
3. Debtor lists a 1995 Toyota on Schedule D with a debt to a church. The debt is not provided for in the Plan and not providing for treatment could indicate that Debtor cannot afford the payments called for under the plan, that Debtor may have paid or be paying this debt directly and have more income available for the plan, or that the secured debt may not be properly perfected so more monies should be available for unsecured claims. 11 U.S.C. §§ 1325(a)(6) and 1325(a)(4).
4. Debtor provides for an IRS Claim in Class 5; however this debt is not listed on Schedule E and it appears this creditor may not have received proper notice of the bankruptcy.
5. The plan does not provide for all of the Debtors' projected

disposable income for the applicable commitment period. 11 U.S.C. § 1325(b). Trustee is not certain that the deduction of \$140.00 on Schedule I for a "TSP loan" is reasonably necessary for the maintenance and support of Debtor. Debtor has not disclose the amount of the loan and when it will be repaid. The plan payments do not increase after the loan is repaid, and Debtor has not furnished evidence to show why the repayment of this loan is reasonably necessary.

6. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
7. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

25. [13-31337](#)-C-13 ALEXANDER ZEAKOVI OBJECTION TO DEBTOR'S CLAIM OF
TSB-2 Pro Se EXEMPTIONS
10-24-13 [[26](#)]
CASE DISMISSED 11/14/13

Final Ruling: The case having previously been dismissed on November 14, 2013, the Objection is overruled as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot.

26. [13-31439](#)-C-13 DALVON BOLDS OBJECTION TO DEBTOR'S CLAIM OF
TSB-2 Pro Se EXEMPTIONS
10-24-13 [[28](#)]
CASE DISMISSED 11/14/13

Final Ruling: The case having previously been dismissed on November 14, 2013, the Objection is overruled as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot.

27. [11-36541](#)-C-13 PAUL CHU MOTION TO MODIFY PLAN
MC-2 Muoi Chea 10-25-13 [[70](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 25, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on October 25, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28.	13-32842 -C-13	DOYLE ROSS AND KIMBERLY	OBJECTION TO CONFIRMATION OF
	MRG-1	BARNETT	PLAN BY VW CREDIT, INC.
	<u>Thru #31</u>	Peter G. Macaluso	10-30-13 [20]

Local Rule 9014-1(f)(1) Motion. Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, the Chapter 13 Trustee, and the US Trustee on October 30, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). A creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, VW Credit, Inc., opposes confirmation of Debtors plan based on the following:

1. On October 24, 2013, Creditor filed a proof of claim in the amount of \$12,603.37 for a claim secured by a 2007 VW Beetle.
2. Creditor asserts the fair market value of the property is \$10,700.00 based on NADA Guide.
3. Debtors' plan provides for Creditor's claim under class two with a secured claim amount of \$7,500.00. At the time of filing this Objection, Debtors had not filed a Motion to Value Creditor's secured claim.
4. Debtors provide an interest rate of 4.00% on Creditor's claim. The original interest rate was 8.74%. Creditor requests that the court look to the national prime rate at the time of the Objection and adjust the interest rate up to 6.00%, to reflect the risk involved in the loan. 11 U.S.C. § 1325(a)(5)(B).

Debtors' Response

In response to Creditor's Objection, Debtors state that a Motion to Value the secured claim of Creditor was filed on October 30, 2013 and it set to be heard on December 10, 2013 at 2:00 p.m.

Furthermore, Debtors assert that an interest rate of 4.00% is appropriate. Debtors use "Til" as a foundation for stating that the prime rate was 3.25% and that Debtors' are providing .75% for risk for a total of 4.00% interest, which should be sufficient.

Discussion

Regarding the value of the VW Beetle and Creditor's secured claim, the court is set to approve Debtors' Motion to Value the secured claim of creditor and set the value of Creditor's secured claim at \$7,300.00. Debtor

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needs to adjust the plan filed with the court because it states that the value of Creditor's secured claim is \$7,500.00 and not \$7,300.00.

There is also a dispute over the interest rate on the secured claim. Debtors placed the interest rate at 4.00% and Creditor asserts it should be 6.00%. The standard the court follows in determining the appropriate interest rate is the formula approach supported by a plurality of the Court in *In re Till*, 541 U.S. 465, 124 (2004). Courts in this district have interpreted *Till* to require the use of the formula approach which involves taking the prime rate at the time of filing and adjusting between 1.5% to 3% based on risk factors. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005). With the prime rate hovering around 3.25%, the court adds an additional 1.25% bankruptcy adjustment, and requires that the interest rate be 4.50% per annum. The plan should be adjusted and the interest rate should be increased from 4.00% to 4.50%.

Debtors need to adjust their plan to reflect the proper value of Creditor's secured claim and to increase the interest rate on the secured claim from 4.00% to 4.50%. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

29. [13-32842](#)-C-13 DOYLE ROSS AND KIMBERLY OBJECTION TO CONFIRMATION OF
NLE-1 BARNETT PLAN BY DAVID CUSICK
Peter G. Macaluso 11-7-13 [[28](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on November 7, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because it relies Motions to Value the secured claims of VW Credit, Inc. and Wells Fargo Financial. If the motions are denied, Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

The court intends on granting both Motions to Value at the hearing on December 10, 2013. Therefore, Trustee's Objection will be overruled as moot. Debtors' plan will not be confirmed; however, because issues concerning the Objection to Confirmation filed by VW Credit, Inc. remain unresolved.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by the Trustee having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that Objection to
confirmation of the Plan is overruled.

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30. [13-32842](#)-C-13 DOYLE ROSS AND KIMBERLY MOTION TO VALUE COLLATERAL OF
PGM-1 BARNETT VW CREDIT, INC.
Peter G. Macaluso 10-30-13 [[15](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 30, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$7,300.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2007 VW Beetle. The Debtor seeks to value the property at a replacement value of \$7,300.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2009, more than 910 days prior to the filing of the petition, with a balance of approximately \$12,603.37.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$7,300.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the

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pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of VW Credit, Inc. secured by a 2007 VW Beetle, is determined to be a secured claim in the amount of \$7,300.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$7,300.00 and is encumbered by liens securing claims which exceed the value of the Property.

31. [13-32842](#)-C-13 DOYLE ROSS AND KIMBERLY MOTION TO VALUE COLLATERAL OF
PGM-2 BARNETT WELLS FARGO DEALER
Peter G. Macaluso 11-1-13 [[23](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 1, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Respondent creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$8,000.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law: :

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2007 GMC Sierra. The Debtor seeks to value the property at a replacement value of \$8,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2009, more than 910 days prior to the filing of the petition, with a balance of approximately \$10,621.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title appears under-collateralized.

Creditor's Opposition

Creditor, Wells Fargo Bank Dealer Services, Opposes Debtors' Motion to Value. Creditor argues the value placed on the vehicle is improper based on NADA Used Car Guide. The NADA report provided by Creditor provides for a retail value of \$16,150.00, not \$8,000.00 as asserted by Debtors.

Creditor asserts that the net payoff under Debtors' Contract, as of the petition date, was \$10,489.33 and that this amount should be the amount of Creditor's secured claim.

Debtors' Response

Debtors respond to Creditor's Opposition argues that the admissible evidence before the court favors the Debtors' opinion of the vehicle's

value. *In re Enewally*, 368 F.3d 1265 (9th Cir. 2004). Creditor's evidence of value is a commercial publication that does not take into consideration the specific condition of Debtors' vehicle.

Discussion

Debtors present the court with their opinion of value in the Declaration of Debtors. The Declaration states that the opinion was formed on the basis of "personal research," using local newspapers, trade articles, Kelley Blue Book, and NADA. Debtors then listed issues with the vehicle, stating that it was in "fair condition." Debtors state that they researched the cost of repairing the issues with the vehicle and that repairs would cost between \$3,500.00 and \$4,500.00.

Creditor opposed Debtors' valuation and provided the court with a printout from the NADA website that listed various values of the vehicle based on its condition. The printout is authenticated by the declaration of Michelle Morris. The values for the vehicle, based on its condition, range from \$10,600.00 to \$16,150.00.

The court values personal property acquired for personal, family, or household purposes using the property's "replacement value" as of the petition date, without deduction for costs of sale or marketing, 11 U.S.C. § 506(a)(2). "Replacement value" is defined as "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined. *Id.* Here, Debtors did not use the term "replacement value," and have not referred to the price a retail merchant would charge for a similar vehicle. However, Debtors have testified as to their opinion of the "retail value" of the vehicle, which constitutes some evidence. Creditor also submitted some evidence; however, Creditor's evidence is not specific to Debtors' vehicle, which is the vehicle the court is to value. Creditor's approach undermines the presence of the word "condition" in definition of "replacement value."

Creditor's evidence of value does not account for the condition of Debtors' particular vehicle; however, Debtors' evidence does and the court grants more weight to Debtors' evidence. Therefore, the court will grant the motion and set the value of Creditor's secured claim at \$8,000.00. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion
pursuant to 11 U.S.C. § 506(a) is granted and
the claim of Wells Fargo Dealer Services
secured by a 2007 GMC Sierra, is determined to

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be a secured claim in the amount of \$8,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$8,000.00 and is encumbered by liens securing claims which exceed the value of the Property.

32. [12-41444](#)-C-13 TONI GOMES CONTINUED MOTION TO APPROVE
DRE-3 D. Randall Ensminger LOAN MODIFICATION
10-8-13 [[106](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the U.S. Trustee and Chapter 13 Trustee on October 8, 2013. 28 days' notice is required; that requirement was met.

Tentative Ruling: The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to granted the Motion to Approve Loan Modification. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This Motion was continued from the original hearing date November 5, 2013, to permit Debtor to provide the court with a copy of the subject loan modification agreement with Olympic Mortgage LLC.

In Debtor's Motion, Debtor requested that the court approve a modification of Debtor's mortgage with Olympic Mortgage, LLC concerning real property commonly known as 12770 Long Valley Road, Penn Valley, California. Olympic Mortgage, LLC holds a second deed of trust on the property. Debtor and Olympia agreed to this loan modification in exchange for Debtor dismissing a Motion to Value the secured claim of Olympia.

The agreement provided that modifications to the note would commence September 17, 2013, and that the reduced principal would be \$45,000.00. Interest would accrue at 7% interest per annum from the date of the executed

modification until September 1, 2015, at such time all accrued interest would be added to the amended loan amount and the balance amortized over 30 years, due in 5 ears on September 1, 2020. Monthly payments were slated to commence on September 1, 2015, in the amount of \$341.30. One payment will be made on September 1, 2020, in the amount of \$48,571.00.

Olympic Mortgage, LLC filed a statement of non-opposition to the Motion.

In support of her Motion, Debtor had filed a Declaration, as well as Exhibit A. Exhibit A (Dkt. 109) was supposed to be the loan modification agreement supporting the terms outlined in Debtor's Motion; but the Exhibit was left blank and does not contain an agreement. The court advised in its continuance that before the court can approve the terms of this loan modification, it must be afforded an opportunity to review the signed and executed agreement. The court continued the Motion and established a deadline of November 15, 2013, for Debtor to file and serve on the Chapter 13 Trustee and United States Trustee, the loan modification documents.

It appears that Debtor did in fact, file a copy of the Loan Modification Agreement, but uploaded it as a duplicate Exhibit "A" and labeled the document "Addendum to Modify Original Note" (Dckt. No. 111). The agreement uploaded contains only the Debtor's signature, but since the Lender, Olympic Mortgage, LLC has filed a statement of non-opposition to the matter, and the content of the modification agreement aligns with the terms purported in Debtors' Motion, the court is satisfied that the Lender accepts the terms of the attached agreement. Thus, the court will grant the Motion and approve the agreement to modify the note.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Motion to Approve the Loan
Modification filed by Debtor having been presented
to the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion to
Approve Loan Modification is granted.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 15, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Trustee objects to confirmation of Debtors' Plan on the following grounds:

1. Debtors' Plan does not meet Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt assets total \$14,890.00 and the most recent Plan (Dckt. No. 38) proposes to pay 4% to unsecured creditors, which amounts to approximately \$1,764.44. According to Schedules B and C (Dckt. No. 1, pages 13-17), non-exempt equity exists in several vehicles:

1954 International Pickup:	\$100.00
1964 Willy Fleet Van:	\$100.00
1977 Chevy Corvette:	\$3,000.00
1985 Chevy Corvette:	\$1,500.00
2005 Saturn Vue:	\$1,00.00
2008 Saturn Aura:	\$1,774.00
1996 GMC Pickup:	\$2,500.00
1950 Buick Super:	\$4,916.00

Total:	\$14,890.00
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Debtors' original Plan and First Amended Plan both proposed to pay 35% to unsecured creditors, which totals approximately \$15,430.00.

Debtors' Petition is not filed in good faith under 11 U.S.C. § 1325(a)(3). The basis for Trustee's good faith objection is an examination of the totality of the circumstances, with Trustee finding the following factors of consideration (as enumerated in *Fidelity & Casualty Co. Of New York v. Warren*, 89 B.E. 87, 92) in this instant case: (1.) The amount of the proposed payments and the

amounts of Debtor's surplus, and (4) The accuracy of the plan's statements of the debts, expenses, and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court.

Trustee's original Objection to Confirmation (NLE-1, Dckt. No. 15) was heard and sustained by this court on September 10, 2013. Trustee indicated in that Objection that it appeared that Debtors were attempting to retain real property at 19837 Loop Street, Anderson while not living there, and not collecting any rental income from the property. Debtors' residential address according to the petition is 3009 Joyce Drive, Anderson, California.

Debtors' subsequent Motion to Confirm (MWB-1, Dckt. #20) set for hearing on October 8, 2013, does not address this issue. Debtor's Declaration in support of that Motion simply states that Debtors are retaining the property. The Motion was denied at the hearing on October 8, 2012.

The instant Motion to Confirm contains the same information regarding the Loop Street property as the prior Motion. Debtors' Amended Schedule I filed October 15, 2013, now lists rental income of \$610.00 per month. This income was not disclosed on the original Schedule I, or the Amended Schedule I filed in August 19, 2013. Debtors Statement of Financial Affairs does not disclose any rental income received year to date or over the last two years, and Debtors do not mention their rental income in their Current Monthly Income. Debtor has not identified how long they've been renting the property, and whether they are renting the property to a relative and at a reasonable market rate. The property is listed as Debtor's residence on Schedule A.

3. Debtors may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6). Debtors' original Schedule J filed June 24, 2013, under penalty of perjury reflected a monthly household budget of \$5,429.00. Debtors' Amended Schedule J filed October 15, 2013, now reflects a monthly budget of \$2,712.00. Trustee is concerned that Debtors may not be able to afford the plan payments, given the significant difference between the original and amended budget.
4. Section 2.09 of the Debtors' Plan provides for the secured claim of Members First Credit Union on a 2008 Saturn. Section 2.14 of the Plan provides for a non-dischargeable debt to the same creditor. Creditor has filed two separate secured proofs of claim (Numbers 7 and 8). One claim lists the 2008 Saturn and the other claim lists a credit card which is also secured by the vehicle. Debtors' Plan does not specify the monthly payments to be made on each of the claims.

The Plan complies does not with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

34. [12-39445](#)-C-13 AFFONSO LOPEZ AND LEILA MOTION TO MODIFY PLAN
SDB-5 ANDRADA LOPEZ 10-22-13 [[114](#)]
W. Scott de Bie

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 22, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on October 22, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. [12-39946](#)-C-13 VICTORIA GOKEY MOTION TO CONFIRM PLAN
DJC-3 Diana J. Cavanaugh 10-21-13 [[104](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 21, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's

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Chapter 13 Plan filed on October 21, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

36. [13-32247](#)-C-13 FLOYDETTE JAMES MOTION TO VALUE COLLATERAL OF
EWV-35 Eric W. Vandermey WELLS FARGO BANK, N.A.
10-28-13 [[17](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 28, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1752 Beale Cir., Suisun City, California. The Debtor seeks to value the property at a fair market value of \$265,900.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$388,705.00. Creditor Wells Fargo Bank's second deed of trust secures a loan with a balance of approximately \$27,352.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A., secured by a second deed of trust recorded against the real property commonly known as 1752 Beale Cir., Suisun City, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$\$265,900.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

37. [13-32247](#)-C-13 FLOYDETTE JAMES
TSB-1 Eric W. Vandermeij

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
CUSICK
10-30-13 [[21](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on October 30, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee initially opposed confirmation of the Plan on the basis that it appeared that Debtor could not afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on a Motion to Value Collateral of Wells Fargo Bank, EWV-35, which was set for this hearing date, on December 10, 2013. The court continued the Objection to December 10, 2013, to be heard concurrently with Debtor's Motion to Value Collateral.

The court is set to grant Debtor's Motion to Value Collateral of Wells Fargo Bank, thereby rendering Trustee's objection moot. Because Trustee's singular issue with the Plan has been resolved, the Plan will be confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by the Trustee having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that Objection to
Confirmation the Plan is overruled as moot,
and the Plan is confirmed.

38. [13-32947](#)-C-13 JEREMY/TANYA DAVIDEK MOTION TO VALUE COLLATERAL OF
DMA-1 David M. Alden AMERICREDIT FINANCIAL SERVICES,
Thru #39 INC.
10-31-13 [[17](#)]

Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 31, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and creditor's secured claim is determined to be \$2,000.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2007 Dodge Grand Caravan. The Debtor seeks to value the property at a replacement value of \$2,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in October 12, 2008, more than 910 days prior to filing of the petition, with a balance of approximately \$14,574.21. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$2,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of AmeriCredit Financial Services, Inc., secured by an asset described as 2007 Dodge Grand Caravan is determined to be a secured claim in the amount of \$2,000 and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$2,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' attorney on November 12, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. Debtors' Plan relies on a pending motion, namely, a Motion to Value Collateral of General Motors Financial Company, which is set for hearing on December 10, 2013. Trustee expressed concern that Debtors would not be able to make payments or comply with the plan under 11 U.S.C. § 1325(a)(6).

The court is set to grant Debtors' Motion to Value the secured claim of AmeriCredit Financial Services, Inc., DMA-1, on December 10, 2013; thus, this part of the Trustee's Objection is resolved.

2. Debtors' Plan does not represent their best efforts, under 11 U.S.C. § 1325(b). Debtor is under median income and proposes plan payments of \$154.90 for 36 months, with a 0% dividend to unsecured creditors. Debtor is self-employed as a house and office cleaner. Debtor has listed business expenses on Schedule J in the amount of \$1,100, however Debtor has not provided a breakdown of each of the business expenses.
3. The Plan may be causing unfair discrimination to creditors under 11 U.S.C. § 1322(b)(1). According to Schedule J, Debtor is paying an on-going student loan payment in the amount of \$50.00 per month, while proposing a 0% dividend to general unsecured creditors.

Debtors' Response to Trustee's Objection to Confirmation

With respect to the second and third bases for Trustee's Objection, Debtors assert that Trustee's issues with Debtor's business expenses and loan payments have been resolved. On November 13, 2013, Debtors filed Amended Schedules I and J (Dckt. No. 13).

Amended Schedule J includes Debtor's breakdown of the business expenses related to Debtors' cleaning business, and corrects Debtors' "inadvertent listing" of a student loan expense. Upon reviewing Debtors' Schedule J, which includes an attachment itemizing Debtors' regular expenses from the operation of their office and house cleaning business (as calculated in Line 16 of Schedule J), the court is satisfied that Debtors have now brought their Chapter 13 Plan into compliance, and the Plan will be confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, Debtors' Chapter 13 Plan filed on October 3, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 28, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2351 Gull Ct., Fairfield, California. The Debtor seeks to value the property at a fair market value of \$193,345.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$224,122.00. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$42,788.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 2351 Gull Ct., Fairfield, California, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$193,345.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

41. [13-32248](#)-C-13 RONALD/MARGARET PETERS CONTINUED OBJECTION TO
TSB-1 Eric W. Vandermey CONFIRMATION OF PLAN BY DAVID
CUSICK
10-30-13 [[20](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on October 30, 2013. 14 days' notice is required. That requirement was met.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's tentative decision is to overrule the Objection as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Prior Hearing

On November 19, 2013, the court held its first hearing on the Chapter 13 Trustee's Objection to Confirmation. At the prior hearing, the court continued the matter because it was based on a pending Motion to Value set to be heard on December 10, 2013.

Chapter 13 Trustee Objection

The Chapter 13 Trustee initially opposed confirmation of the Plan on the basis that it did not appear that Debtor could afford to make the payments of comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' Plan relied on the Motion to Value Collateral of Bank of America, N.A., EWV-

36, which is set for the hearing date of December 10, 2013.

The court is set to grant Debtors' Motion to Value the secured claim of Bank of America, N.A. on December 10, 2013. Thus, Trustee's singular Objection is resolved and overruled.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, Debtors' Chapter 13 Plan filed on September 19, 2013, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and the Office of the United States Trustee on November 25, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to continue the Motion to Incur Debt to [date at [time. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Movant, Debtor Robert Contreras ("Debtor") seeks permission to purchase real property commonly known as 13285 Cabral Circle, Galt, California, for the total purchase price of \$409,135.00. Debtor thereby requests permission from the court to incur a debt up to \$410,00.00.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B).

Background

Debtor claims in his Motion that he applied and was approved for a Uniform Residential Loan from CMG Mortgage, Inc. dba CMG Financial. Under the approved loan, Debtor's mortgage would purportedly be \$2,361.00 per month, which includes property taxes. The approved loan carries a term of 30 years, with an initial interest rate of 3.75%. In his Declaration, Debtor states that he is able to afford this payments because he recently received a pay increase in his employment as a California Highway Patrol Officer. A copy of a recent pay advice received by Debtor is attached to the Motion as Exhibit C. The deposit advice shows that Debtor is currently receiving \$8,596.49 in gross pay, with \$5,387.31 in monthly net pay resulting after taxes and multiple deductions for health insurance,

retirement, and other accounts and benefits.

Additionally, Debtor filed Amended Schedules I and J on November 25, 2013, to reflect these changes in income and certain expenses. Debtor asserts that based on these schedules, Debtor can afford a monthly mortgage payment of \$2,361.00, and continue making his monthly payments of \$550 per month, as stated in his confirmed Plan. Debtor states that he is current in his plan payments, which is estimated to pay more than 60% to unsecured creditors.

Discussion

Pursuant to Fed. R. Bankr. P. 4001(c)(1)(A), however, a copy of the proposed credit agreement must be provided to the court in order to obtain the court's approval. The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

In this case, Debtor has not attached a copy of the subject loan agreement. This provides cause, in and of itself, to deny the motion pursuant to Fed. R. Bankr. P. 4001(c)(1)(A). Although Debtor has described the terms of the new loan agreement with some specificity in the instant Motion, the court cannot ascertain whether Debtor was actually approved for this new loan because Debtor has not provided a copy of the actual agreement.

There is another issue, aside from the court's inability to assess the new debt because Debtor did not attach the current agreement to his pleadings, that further complicates the court's determination of whether the agreement should be approved. Documentation of the new financing agreement is all the more critical, because, as Debtor acknowledges, Debtor had already obtained an previous order from the court on March 21, 2013 (Dkct. No. 47), approving Debtor's Motion to Incur Debt resulting from a loan that was granted in the amount of \$1,720.00 per month, mandating the payment of \$375,000.00 at 3.5% over 30 years.

Debtor's previous Motion to Incur Debt, AVN-1, filed on December 18, 2012, was originally continued so that the Debtor could produce supplemental pleadings that would clearly identify the loan to be obtained, and the agreed upon terms; Debtor had initially only attached a letter evidencing that Debtor had been pre-approved for a 30-Year-Fixed Veterans Affairs loan for up to \$400,000.00. At the hearing, Debtor had represented to the court that he was actually seeking a much smaller loan, which wasn't stated in his pleadings. After a continuance and a later hearing in front of the Honorable David E. Russell, Debtor's Motion was granted and the court issued the March 21, 2013 order described above.

The docket does not show that Debtor ever filed supplemental evidence to support the Motion to Incur Debt; perhaps Debtor presented such paperwork to the court at the continued hearing. Consequently, it is difficult for the court to find out whether the loan debt approved by the court on March 1, 2013, is the same loan that is the subject of the instant motion. The court notes that upon a review of the available exhibits, the lender executing the current loan agreement is CMG Mortgage, Inc. The lender on the agreement at issue in Debtor's first Motion to Incur Debt is ELoan4Home, a mortgage broker based in Elk Grove, California. Both loans are for the

same property that Debtor wishes to purchase, located at 13285 Cabral Circle, Galt, California. Curiously Debtor's instant Motion to Incur Debt does not factor in any of the monthly mortgage payment that was proposed by Debtor in his earlier Motion.

If the loan agreement in this new Motion to Incur Debt is indeed the same as the Veteran Affairs loan obtained by Debtor earlier this year, and Debtor is filing the instant motion to make increased payments under the current agreement (indicating that Debtor has negotiated new terms for the mortgage with the same lender), then Debtor must file a Motion to Modify Secured Debt. Debtor is advised that a Motion to Incur Debt is appropriate where the Chapter 13 Debtor is incurring a new Debt, and not a preexisting debt.

The net result of this confusion over Debtor's circumstances is that Debtor must provide an explanation as to whether Debtor actually executed the previous loan agreement approved by the court in March 1, 2013; and if so, whether the loan agreement in Debtor's Motion to Incur Debt, AVN-1, filed on December 18, 2012 (Dckt. No. 25), is the same agreement described in this Motion. This confusion makes supplying the subject loan agreements all the more essential. Therefore, the court will continue the Motion to allow Debtor to file supplemental documentation, evidencing the new agreement, and to permit Debtor to amend his pleadings to clarify whether there is any distinction to be made in the agreements alleged in Debtor's previous and current Motions to Incur Debt.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Incur Debt is continued to [date at [time, to permit Debtor to provide supplemental documentation to support the existence of the new agreement, with identified terms, and to amend Debtor's pleadings to clarify the relationship between the debt incurred as the court's approval of Debtor's previous Motion to Incur, AVN-1, granted on March 1, 2013, and the debt alleged in the instant Motion.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 22, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, Chapter 13 Trustee David Cusick filed an opposition to Debtor's Plan. Trustee raises the following objections to the Plan:

1. The plan in the additional provisions calls for a \$68,000.00 lump sum payment "if necessary," and does not identify the source of the payment or circumstances that will require the payment. Creditor Chase is included in the confirmed Plan as a Class 1 creditor. Chase filed Court Claim #6, indicating an arrears of \$72,755.52. The monthly dividend for the arrears is \$1,310.45 per the confirmed Plan, and the contract installment amount for the confirmed plan is \$2,075.26. Debtor is proposing an arrearage dividend of \$0.00 for months 1-49, and \$68,000.00 during Month 50 if necessary. Debtor is proposing a monthly contract installment amount of \$1,100.00 (projected payment to be paid outside of the plan if Debtor is successful in his loan modification efforts). Trustee has paid the creditor \$3,814.25 on the arrears claim and \$16,602.08 in Monthly Contract Installments.
2. Debtor is paid ahead \$22,848.00 under the proposed plan. Debtor is proposing plan payments of \$200.00 per month for 49 months, and \$68,000.00 for 1 month (if necessary). Debtor has paid Trustee \$25,048.00 under the confirmed plan. The last payment was posted on September 4, 2013. Debtor is delinquent in \$15,366.00 under the confirmed plan.
3. Debtor is proposing to decrease the term of the Plan from 60 months

to 50 months. Per the Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, the applicable period is 5 years. Debtor has not explained the proposed decrease.

4. Debtor has not provided current statements of income and expense in support of the plan. Debtor states in his declaration that his spouse is no longer working and is receiving disability. Trustee is unable to determine if Debtor can afford the proposed payments, or if the Plan is Debtor's best effort.

Thus, the modified Plan does not currently comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 28, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on October 28, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 29, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on October 29, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 11, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to Notice of Mortgage Payment Change has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor having filed an opposition, the court will address the merits of the motion at the hearing.

The court's tentative decision is to set an evidentiary hearing on the Objection to Notice of Mortgage Payment Change for [date at [time. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Summary

Debtors Raymond Eugene Stowie and Krista Diane Stowie ("Debtors") object to the Notice of Mortgage Payment Change of JP Morgan Chase Bank, N.A. ("Creditor"). The Notice, which was filed as a supplement to Creditor's Proof of Claim filed on March 2012 as Claim No. 4, reflects that the new payments to be made by Debtors as \$1,637.40. Debtors state that they agreed to a new payment of \$1,405.96. Debtors object to the excess of the agreed amount, which is \$231.44 of the new payment stated in the Notice.

As Debtors state, FRBP 3002.1(e) provides for a motion procedure to resolve disputes of a notice under subsection (c) of Rule 3002.1. The Rule does not state a procedure for dispute of a notice under subsection (b) of the Rule. Subsection (d), however, treats a notice under subsection (b) as a supplement to the proof of claim filed by the creditor, and therefore dispute of the Notice is brought by this Objection.

Background

The Debtors' case was filed on October 21, 2011. The period involved in the mortgage payment change, as stated by the Creditor, is February 2012 to October 2014. Exhibit A, pgs. 5-7. The Debtors believe the appropriate period is November 2011 through October 2014 because the case was filed at the end of October 2011, and the Creditor treats the payment change period to extend to October 2014 in determining the components of the payment change, as shown on pages 5 and 7 of Exhibit A, which consist of statements showing activity in Debtors' escrow account.

The components of the payment change according to the Notice are the principal, interest and escrow of Debtors' loan; the escrow amount includes county tax and homeowners insurance. Exhibit A, pgs. 6 and 7. Debtors dispute the tax and insurance amounts stated by the Notice at Exhibit A, on pages 6 and 7. Debtors assert that correct tax and insurance for the period

taken into account, as noted above, for the mortgage payment change, are as follows (exhibit references are listed below):

County Tax

Year	Due Date	Amount	Exhibit
2011/2012	12/12/2011 4/10/2012	741.74 741.74	C page 14 C page 14
2012/2013	12/10/2012 4/10/2013	742.79 742.79	D page 15
2013/2014	12/10/2013 4/10/2014	742.79 742.79	2013/2014 tax statement has not yet been received. The 2012/2013 amounts of tax are used for estimates of the 2013/2014 amounts
	Total		

Homeowner's Insurance

Year	Due Date	Amount	Exhibit
6/2011 - 6/2012	June 2011	0	The insurance premium is based on a June to June cycle (Exhibit E page 16), and is paid by the Creditor in May (Exhibit A pages 6 and 7), and so for 2011, was prepetition.
6/2012 - 6/2013	June 2012	\$1,532.00	F page 17
6/2013 - 6/2014	June 2013	\$1,559.00	G page 18
6/2014 - 6/2015	June 2014	\$ 1,559.00	The 2014/2015 insurance statement has not yet been received. The premium amount for the 2013/2014 year is used as an estimate for the 2014/2015 year.
	Total	\$4,650.00	

Total Tax and Insurance for period November 2011 to October 2014:

Tax (per above): \$4,454.64

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Insurance (per above):	\$4,650.00
Total:	\$9,104.64

According to the Notice, the current mortgage payment is as follows (Exhibit A, page 5):

Principal and interest:	\$1,030.64
Escrow:	\$191.70
Total:	\$1,222.34

Debtors state that at the current monthly escrow amount of \$191.70, for the period from November 2011 to October 2014 (a period of 36 months), the escrow funds paid will be \$6,901.20. The difference between the needed escrow amounts, as calculated above, for the period involved, and the escrow deposits which will be paid at the current monthly escrow amount for the period involved, as calculated above, is:

Needed escrow deposits:	\$9,104.64
Current deposits:	\$6,901.20

This difference must be paid over twelve months, as noticed by the Creditor. The deficit in monthly escrow deposits is $\$2,203.44 \div 12 = \183.62 . Thus, the mortgage payment must be increased by \$183.62 per month. Pursuant to the Notice the current mortgage payment is \$1,222.23; the new payment is consequently :

Current payment:	\$1,222.23
Prorated deficit:	\$183.62
Total:	\$1,405.96

Debtors assert that the new payment should be \$1,405.96 commencing November 1, 2013, and commencing with the November 25, 2013 plan payment. As a result, Debtors object to the new payment amount stated by the Creditor in the Notice at \$1,637.40, and specifically object to the difference in amount between the Creditor's new payment amount, and the payment amount stated by the Debtors, such difference being \$231.44, calculated as follows:

Creditor new payment:	\$1,637.40
Debtors' new payment amount:	\$1,405.96
Difference:	\$231.44

Debtors additionally object to the negative balance of \$2050.17 listed on the escrow account, on the basis that there is no accounting or evidence in support of this amount. Debtors also object to the notice on the basis that it includes payment of prepetition taxes. The confirmed plan (Dckt. No. 27) provides for an arrearage of \$13,363. The claim of the Butte County Tax Collector, Claim No. 5 (Exhibit B, page 10), states an arrearage of \$10,496.95. The difference is \$2,866.35, which includes the prepetition tax claim reviewed above; the confirmed plan already deals with the prepetition county tax issue, which Debtors state Chase does not take into account.

Creditor's Opposition

On March 1, 2012, Chase filed a proof of claim in the sum of \$197,543.52. On September 23, 2013, Chase filed its Notice of Payment Change. The Notice appraises Debtors of the new escrow payment of \$606.76,

commencing with the November 1, 2013 monthly mortgage installment.

Chase attached with the Notice an Escrow Account Statement dated August 23, 2013 ("Escrow Statement") reflecting that effective with the November 1, 2013 monthly payment, the new escrow payment will be \$606.76, consisting of \$253.72 for the escrow account deposit and \$353.04 as and for escrow shortages. The Escrow Statement also reflects a review period of February, 2012 to October, 2013.

Debtors acknowledge that there is an escrow amount owing; however, Debtors object to any amount in excess of \$375.32. It would appear that Debtors are objecting to both components of the monthly escrow payment - the ongoing escrow deposit (\$253.72) and the escrow shortage amount (\$606.76). In response to Debtors' objection to the ongoing escrow deposit in the amount of \$253.72, the Escrow Statement reflects at Page 2 that the projected escrow account activity for the upcoming 12 month period from November, 2013 to October, 2014 includes the following anticipated disbursements:

<u>Date</u>	<u>Activity</u>	<u>Estimated Amount</u>
November, 2013	Payment of Property Taxes	\$742.79
March, 2014	Payment of Property Taxes	\$742.79
June, 2014	Payment of Hazard Insurance	\$1,559.00

The escrow deposit payment of \$253.72 consists of the total projected disbursements of \$3,044.58 spread out over 12 months. Chase contends that the ongoing escrow deposit of \$253.72 is correct and should not be reduced. In response to Debtor's objection to the escrow shortage figure of \$353.04, Chase is currently reviewing its file to provide a detailed itemization requested by Debtors pertaining to the 21 month period of time set forth in the Escrow Statement and will amend the instant opposition to provide such itemization upon receipt.

Debtors' Response

Debtors state that Creditor and Debtors are in agreement regarding the components of the ongoing escrow deposit, and that only tax and insurance--and not the principal and interest of the mortgage payment--are in dispute. Debtors additionally argue against allowing Chase to amend their opposition after reviewing its file to provide an itemization of the account. Debtors believe that the 43 days that Creditor had to review its file was sufficient, and that the 21-months review would not be helpful because the escrow issue requires review from the filing of the case, through the projected period stated in the Creditor's Notice, instead of the February 2012 through October 2013 timeline described by Creditor in its opposition.

Ruling

The court's decision is to set this matter for an evidentiary hearing as prescribed by procedures under Local Bankr. R. 9014-1(g). It is clear that disputed material factual issues remain to be resolved, and that Creditor will need more time to review its files for the escrow items according to the timeline that Debtors have stated.

Although Debtors assert that the 21 month itemization of escrow items by Creditor on Debtors' proposed timeline will not be helpful,

Creditor may choose to instead offer an itemization of the tax and insurance items from the filing of the case in October 2011 (the period that Debtors describe) through the projected escrow needs of Creditor in October 2014. Creditor may offer conflicting analysis of the escrow items as charged on Debtors' timeline, at which point the court will need to parse the competing data provided on Debtors' escrow account. Thus, the court finds an evidentiary hearing to be most appropriate in this matter.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that an evidentiary hearing on the Objection to Notice of Mortgage Payment Change is set for [date at [time.

47. [12-25750](#)-C-13 JOHNNIE/ROBBIE ARNOLD MOTION TO MODIFY PLAN
CK-4 Catherine King 11-4-13 [[66](#)
Thru #48
CASE DISMISSED 11/14/13

Final Ruling: The case having previously been dismissed, the Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot, the case having already been dismissed.

48. [12-25750](#)-C-13 JOHNNIE/ROBBIE ARNOLD
CK-5 Catherine King

MOTION TO VACATE DISMISSAL OF
CASE

11-15-13 [[78](#)]

CASE DISMISSED 11/14/13

Local Rule 9014-1(f)(2) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Debtors, and Office of the United States Trustee on November 15, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Vacate Dismissal of Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Vacate Dismissal of Case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors filed their Petition for Chapter 13 on March 23, 2012. Trustee had filed a Motion to Dismiss that was heard on November 13, 2013, which the court granted because Debtors did not file an opposition to Trustee's Motion to Dismiss. Trustee's Motion to dismiss was brought on the grounds that Debtor is in material default of the Plan, as Debtor's original Plan would have completed in 794 months--as opposed to the 60 months proposed.

Debtors claim that should they have been allowed to appear at the hearing on the Motion, then it would have brought to the court's and Trustee's attentions that Debtors filed a modified Plan, addressing issues brought forth in Trustee's Motion to Dismiss. Debtors erroneously believed that Trustee would withdraw the Motion to Dismiss, once the Modified Plan was filed, which purportedly resolved Trustee's issues.

Debtors state that they are not in a financial position to pay 100% to general unsecured claims. Their filed B22 C form states that the debtors have a monthly disposable income of -\$486.58. There is no Chapter 7 liquidation issue which would compel the debtors to pay a percentage to general unsecured creditors. The modified plan was filed November 4, 2013, along with a motion to confirm modified plan set to be heard on December 10, 2013. The modified plan provides that the debtors will continue making monthly payments to the trustee in the amount of \$95.00, paying the remaining allowed attorney's fees and not less than 2% to general unsecured claims. Debtors are current with their plan payments. This case was filed to strip the secured claim of Chase Home Lending, who holds a second trust deed on the debtors' real property. An order granting the Motion to Value Real Property was granted and entered on June 12, 2012. Debtors state that

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should the case not be reinstated, Chase Home Lending will be allowed to commence with foreclosure proceedings, and Debtors would lose their home.

Trustee's Response

Trustee points out that Debtors have not cited any legal authority for the motion, as required under Local Bankruptcy Rule 9014-1(d)(5). Additionally, Debtors did not file an opposition to Trustee's Motion to Dismiss (Dckt. No 62), filed on October 16, 2013.

Discussion

Local Bankruptcy Rule 9014-1(d)(5) states that "[each motion, opposition, and reply shall cite the legal authority relied upon by the filing party." Debtors have not moved under any sections of the United States Bankruptcy Code, and do not cite to any relevant Federal Rules of Bankruptcy Procedure to support their contention that the court should vacate its order of dismissal of Debtor's case.

Debtors could have drawn from multiple sources of authority in building a legal foundation for their Motion to Vacate Dismissal of the case. For instance, Federal Rule of Bankruptcy Procedure 9024 furnishes a basis for the court to reopen a case under the Bankruptcy Code; motions to reopen are commonly brought to this court and granted upon a showing that the debtor has remedied the mistake upon which a dismissal was entered. Debtors have instead opted for the atypical measure of filing a motion to vacate the dismissal of the case, citing no statutory basis in requesting that the court's order, entered on November 14, 2013, be vacated.

Federal Rule of Civil Procedure 60(b)(1) (as incorporated by Federal Rule of Bankruptcy Procedure 9024), states that an order may be vacated if it was the result of mistake, inadvertence, surprise, or excusable neglect. Debtor does not cite any mistake, inadvertence, surprise, or excusable neglect. Debtors could argue that there were valid reasons, as provided for by Federal Rule of Civil Procedure 60(b)(1), to vacate the court's dismissal order. Debtors do not make any such arguments in their motion.

Additionally, as Trustee emphasizes, Debtors could have simply submitted a response to the Trustee's duly noticed Motion to Dismiss. The notice of the hearing on Trustee's Motion to Dismiss (Dckt. No. 63), which was properly filed and served on Debtors and Debtors' Counsel, advises that if Debtors wish to respond, then written opposition must be served and filed with the clerk to avoid the court resolving the matter without oral argument. The court docket shows that Debtors did not file anything to oppose Trustee's Motion to Dismiss their case; moreover, as Debtors acknowledge, Debtors did not appear at the hearing on the Motion because they believed that appearances would have been disallowed. Unfortunately, in missing their noticed opportunity to register their opposition with the court, Debtors missed their chance to highlight the fact that a modified plan had been filed, rendering Trustee's Motion to Dismiss premature (as the confirmation hearing for the Amended Plan had not yet occurred).

Debtors and Debtor's Attorney is advised that the future prosecution of their case cannot advance in this manner. Debtors' attorney must diligently monitor Debtors' case and not operate under the assumption that it is within the court's ability to do the same, given the volume of cases reviewed by the court every day and because the onus of raising the issue of

the modified plan to the Trustee is on Debtors, and not the court.

The court is mindful, however, that in this case Debtors have proposed an Amended Plan for confirmation, and that Debtors appeared to have made an honest mistake relying on their belief that Trustee's Motion to Dismiss would be withdrawn once their new plan was filed. The court will vacate its dismissal order, with a warning to Debtors and Debtors' Attorney that they must be diligent and timely in continuing to prosecute their case. Debtors' Counsel is also advised that in order to competently and effectively represent Counsel's clients, Counsel's work must contain citations to the appropriate statutory authority for all pleadings filed with the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Vacate Dismissal of Case filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Vacate Dismissal of Case is granted, and that the court's Order to Dismiss the Case, entered on November 14, 2013, be vacated and that the case is reopened.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 15, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the Plan on the below grounds:

1. It appears that Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$1,250.00 under the terms of the proposed modified plan. According to the proposed modified plan, payments of \$20,450.00 have become due. Debtor has paid a total of \$19,200.00 to Trustee with the last payment posted on June 20, 2013, in the amount of \$800.00.
2. Trustee is uncertain of the Plan payment proposed. The additional provisions state payments of \$625.00 per month, shall begin October 2013, while Debtor's Motion indicates payments are \$600.00.
3. Debtor's modified plan no longer provides for Bank of America as a Class 2 secured claim regarding a 2008 Jeep Liberty. Section 1.02 of Debtor's modified plan and Debtor's Motion indicates that Debtor paid the balance of this claim to the creditor directly, indicating that this claim was paid over the summer.

Debtor, however, has not provided proof that this creditor has been paid in full. Bank of America has not amended its claim. Debtor has not explained how she was able to pay the remaining balance to this creditor over the course of the summer, which Trustee currently shows as \$5,635.59. Debtor's plan payments under the confirmed plan are \$800.00 per month. Debtor's last payment to Trustee was in June for \$800.00. If Debtor applied her plan payments for the months of

July through September for this creditors, then it would be insufficient to pay the remaining principal owed of \$5,635.59.

4. Debtor has not provided current income and expense statements to support the proposed reduced plan payment from \$800.00 to \$625.00. Debtor filed Schedules I and J at the onset of this case on June 22, 2011, which reflect a monthly net income of \$800.80.
5. Section 1.03 of Debtor's modified plan proposes a 60 month commitment period. The additional provisions merely ratify all prior payments, propose \$0.00 payments for July through September 2013, then payments of \$625.00 commencing October 2013 until all claims are paid in full without exceeding the statutory limit. Debtor's Motion proposes a 66 month commitment period. Debtor states that Debtor has made 22 months under the terms of the original plan, and that the Amended Plan proposes that monthly payments resume effective October 2013, and continue for 38 months. October 2013 is month 28 where Debtor's petition was filed in June 22, 2011. An additional 38 months would total 66 months. Additionally, Debtor has made 24 payments under the original plan, not 22 as the motion states.
6. Debtor's Declaration does not provide any explanations for the proposed modification, the plan payments proposed, or any terms of the proposed modified plan.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

50. [13-33253](#)-C-13 STEPHEN/KYMBERLY WEINANDY MOTION TO VALUE COLLATERAL OF
DJC-1 Diana J. Cavanaugh SANTANDER CONSUMER USA, INC.
11-12-13 [[14](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 12, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and creditor's secured claim is determined to be \$12,092.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2005 Toyota 4Runner Sport SUV 4DR. The Debtor seeks to value the property at a replacement value of **\$12,092.00** as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in June 22, 2008, more than 910 days prior to filing of the petition, with a balance of approximately \$17,642.64.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$12,092.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C.

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§ 506(a) is granted and the claim of Santander Consumer, USA, Inc. secured by an asset described as 2005 Toyota 4Runner Sport SUV 4DR is determined to be a secured claim in the amount of **\$12,092.00**, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is **\$12,092.00** and is encumbered by liens securing claims which exceed the value of the asset.

51. [13-33054](#)-C-13 MARIA VEGAS
NLE-1 Timothy J. Walsh
OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
11-12-13 [[21](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 12, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because Debtor's Plan relies on the Motion to Value Collateral, which is set for hearing on December 17, 2013.
2. Debtor's Plan does not provide all of Debtor's projected disposable income for the applicable commitment period, under 11 U.S.C. § 1325(b). Trustee is not certain that the deduction of \$494.12 on Schedule I for the "401K Loan" is reasonably necessary for the maintenance and support of Debtor or a dependent. Debtor has not disclosed the amount of the loan, and the terms of repayment. The

Plan payments do not increase after the 401K loan is repaid, and Debtor has not furnished evidence to show why the repayment of this loan is reasonably necessary. Debtor must disclose this as the plan payment may need to increase after the loan is repaid. *In re Egeberg*, 574 F.3d 1045 (9th Circuit, 2009).

3. Debtor did not list a dividend for the \$1,800.00 of attorney fees, to be paid under §2.07 of the Plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Objection to Confirmation of Plan before the opposing party served opposition, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing, the court dismisses without prejudice the Chapter 13 Trustee's Objection to Confirmation of Plan.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

A Objection to Confirmation of Plan
having been filed by the Chapter 13 Trustee,
the Chapter 13 Trustee having withdrawn its
motion to dismiss pursuant to Federal Rules of
Civil Procedure 41(a)(1)(A)(i) and Federal
Rules of Bankruptcy Procedure 9014 and 7014,
good cause appearing,

IT IS ORDERED that Trustee's
Objection to Confirmation of Plan is dismissed
without prejudice.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 16, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

1. It appears that Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$4,782.00 under the terms of the proposed modified plan. According to the proposed modified plan, payments of \$78,738.00 have come due. Debtor has paid a total of \$73,956.00 to Trustee with the last payment posted November 22, 2013, in the amount of \$4,884.00.
2. Trustee is uncertain Debtors have the ability to make the plan payments proposed, which under the confirmed Plan are \$6,483.00 for 4 months, and then \$4,782.00 for 56 months. Debtor is currently \$4,578.00 delinquent under the confirmed plan. A Notice of Default and Application to Dismiss was filed on September 17, 2013, which prompted the filing of Debtors' modified plan on October 16, 2013. Debtor's Motion and Declaration state Debtor suffered a reduction in income of approximately \$400.00, which caused Debtors to become delinquent in their Plan payments.

Debtor's Declaration indicate Debtors have made a revision to their expenses, by reducing their monthly set aside for emergencies and future retirement, to \$1,649.00. Debtors' Amended Schedule J, filed February 11, 2013, lists this expense as \$1,751.00. An adjustment to \$1,649.00 would reflect a \$102.00 reduction. Debtors' modified plan payment proposes payments of \$6,483.00 for 4 months, \$4,782.00 for 9 months, then \$4,884.00 beginning on October 25, 2013, for 47 months, an increase of \$102.00. Trustee questions whether Debtor will be able to make an increased plan payment of \$3,884.00 when

Debtor has been unable to make the payments in the past at a lower amount.

Additionally, Debtor's adjustment in expenses to meet the increased payment do not factor in the \$400.00 reduction in income, as Debtors' Motion and Declaration state. Debtor has not filed current income and expense statements to support the increased payment. Debtor is currently \$4,578.00 delinquent under the confirmed plan, and \$4,782.00 delinquent under the proposed modified plan.

Debtors' Response

Debtors previously confirmed a plan that called for 4 payments of \$6,480.00, and 56 payments of \$4,782.00 for a total of \$293,724.00 over 60 months. Through September 25, 2013, debtors paid a total of \$64,188.00. That amount, subtracted from the \$293,724.00, left a balance owing of \$229,536.00. That amount divided by the 47 months remaining called for a \$102.00 increase to \$4,884.00 starting on October 25, 2013.

Counsel states that the confusion probably stemmed from Counsel's error in stating in the Additional Provisions that "\$4,782.00 on January 25, 2013 through September 25, 2013" when it should have been August 25, 2013 to reflect the 8 payments of \$4,782.00 that Debtors actually made. The Plan thus still funds with the \$102.00 increase for the remaining months, and Debtors request that this oversight be provided for in the order.

Debtors assert that they can afford the \$102.00 increase because they still have \$1,639.00 available on their Amended Schedule J, if the \$102.00 is subtracted from the \$1,751.00 that is actually listed.

Discussion

Debtors' response does not resolve Trustee's concerns with the Amended Plan. It is uncertain whether Debtors will be able to make the increased plan payments of \$4,884.00, since Debtor has not been able to even lower payments in the past. Debtors have also not provided the Trustee copies of their current income and expense statements to explain their the increased payments.

As Trustee points out, Debtors; adjustment in expenses are also not factored into the \$400.00 reduction in income, as reported by Debtors in their Declaration. Debtors' Declaration does not mention a more dramatic reduction in their expenses, which would offset their loss of income and allow them to make the increased payments. Debtors are currently \$4,578.00 under the confirmed plan, and \$4,782.00 delinquent under the proposed modified plan.

This, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by

December 10, 2013 at 2:00 p.m.

the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

54. [13-30667](#)-C-13 FELICIA LAUESE MOTION TO AVOID LIEN OF
CRG-6 Carl R. Gustafson BARCLAYS BANK DELAWARE
Thru #56 10-23-13 [[68](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor and Chapter 13 Trustee on October 23, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid a Judicial Lien is granted. No appearance required.

A judgment was entered against the Debtor in favor of Barclays Bank Delaware, for the sum of \$2,728.33. The abstract of judgment was recorded with Sacramento County on January 31, 2012. That lien attached to the Debtor's residential real property commonly known as 5034 Brown Lane, Fairfield, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$258,000 as of the date of the petition. The unavoidable consensual liens total \$581,035 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real

property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Barclays Bank Delaware, Solano County Superior Court Case No. FCM124749, Document No. 201200009070, recorded on January 31, 2012, with the Solano County Recorder, against the real property commonly known as 5034 Brown Lane, Fairfield, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor and Chapter 13 Trustee on October 23, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid a Judicial Lien is granted. No appearance required.

A judgment was entered against the Debtor in favor of Target National Bank, for the sum of \$5,346.13. The abstract of judgment was recorded with Sacramento County on October 18, 2012. That lien attached to the Debtor's residential real property commonly known as 5034 Brown Lane, Fairfield, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$258,000 as of the date of the petition. The unavoidable consensual liens total \$581,035.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien
pursuant to 11 U.S.C. § 522(f) filed by the
Debtor(s) having been presented to the court,
and upon review of the pleadings, evidence,

arguments of counsel, and good cause
appearing,

IT IS ORDERED that the judgment lien
of Target National Bank, Solano County
Superior Court Case No. FCM1244451, Document
No. 201200106131, recorded on October 18,
2012, with the Solano County Recorder, against
the real property commonly known as 5034 Brown
Lane, Fairfield, California, California, is
avoided pursuant to 11 U.S.C. § 522(f)(1),
subject to the provisions of 11 U.S.C. § 349
if this bankruptcy case is dismissed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and respondent creditor on October 23, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Set Property Value and/or Motion to Avoid Lien of Bank of New York Mellon has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

Debtor appears to be requesting the valuation of the secured claim of a Creditor Bank of New York Mellon pursuant to 11 U.S.C. § 506(a), which allows secured claims to be valued and secured to the extent of the value of the collateral and unsecured, to the extent it is enforceable, for the excess over such value. Debtor is advised that a Motion to Value Collateral, filed under the procedures governed by Rule 3012 of the Federal Rules of Bankruptcy Procedure, is the more appropriate form with which to bring that request. A Motion to Avoid a Lien is filed by debtors to avoid judicial liens, to the extent that they impair a claimed exemption pursuant to 11 U.S.C. § 522(f)(1). No such request to eliminate a lien that may be impairing the Debtor's exemption on property of the bankruptcy estate has been made in the instant motion.

Thus, the court will proceed to consider Debtor's "Motion to Set Property Value and/or Motion to Avoid Lien of Bank of New York Mellon" as a Motion to Value Collateral.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$258,000 as of the date of the petition. The unavoidable consensual liens total \$581,035.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After

application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5034 Brown Lane, Fairfield, California. The Debtor seeks to value the property at a fair market value of \$258,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$460,155.41. Creditor Bank of New York Mellon as successor in interest to Heritage Plaza Mortgage, Inc.'s second deed of trust secures a loan with a balance of approximately \$105,400.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of New York Mellon, as successor in interest to Heritage Plaza Mortgage, Inc., secured by a second deed of trust recorded against the real property commonly known as 5034 Brown Lane, Fairfield, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$258,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 28, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted. No appearance required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on October 28, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on November 7, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtors having filed a reply, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to overrule the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's Plan does not provide for all priority debts as required by 11 U.S.C. § 1322(a)(2). Debtors' Schedule E lists a debt to Placer County Child Support for back support of \$6,000.00. The schedule also lists priority debts to Franchise Tax Board for \$1,000.00 and Internal Revenue Service for \$10,478.00. None of these debts are provided for in Debtors' Plan.

Additionally, Trustee states that the plan may not be Debtors' best effort under 11 U.S.C. § 1325(b). Debtors are above median income and show \$72.00 of disposable income on Form 22C. Schedule A shows only one real property, 723 Newtown Street, Medford, Oregon. The petition reflects Debtor's street address as 2257 Heritage Drive, Roseville, California. The petition was filed on September 25, 2013. Form 22C reflects a household size of 3. Debtors have claimed a housing expense of \$560.00, and \$2,253, for a total expense of \$2,813.00. The housing expenses for Sacramento County in this time period for a household of three were \$523.00 and \$1,834.00, a difference of \$456.00.

Trustee objects to confirmation unless the plan payment is increased to at least \$528.00. Trustee states that while other expenses on Form 22C could be objected to, such as Lines 37 and 43 for lack of evidence, the Trustee limits his objection to this amount, as he believes that Debtor can increase their plan payment to satisfy this objection.

Debtors' Reply

Debtors state that Debtor husband is paying his former spouse directly at the rate of \$100 per month, and that, while the former spouse prefers to be paid directly, she will consent to be paid through the plan if the Trustee requires this.

With respect to the Franchise Tax Board claim, the Board filed an unsecured non priority claim in the amount of \$971 which is provided for with the other unsecured creditors in Class 7. Likewise, the Internal Revenue Service filed a claim in the amount of \$12,317 of which \$1,833 is priority and \$10,484 is general unsecured. The \$1,833 is provided for in the plan under Class 2 and the general unsecured claim is provided for with the other unsecured creditors in Class 7.

Trustee also claims that the plan fails the "Best Efforts Test" because Form 22C was completed incorrectly. Trustee contends the amounts claimed should have been based on Sacramento County Local Standards. Debtors point out, however, that the petition correctly indicates that Debtors reside in Placer County and Form 22C used the correct Local Standards for Placer County. Debtors assert that the plan satisfies the Best Efforts Test.

The crux of Trustee's objection to the lack of Debtors' best efforts under 11 U.S.C. § 1325(b) is that Debtors are above median income, and show \$72.00 of disposable income on their Form 22C. Trustee states that the Plan does not meet the Best Efforts analysis, based on the amounts listed for the Housing and Utilities Local Standards of Sacramento.

Upon reviewing Debtors' petition, however, the court notes that the primary residence claimed is a property located in Roseville, situated in Placer County and not in Sacramento County. Debtors appear to be correct in the housing expenses claimed in their Form 22C. According to the allowed Bankruptcy Allowable Living Expenses reference charts on the website of the UST (<http://www.justice.gov>), permitted expenses for Placer County in this time period for a household of three were \$560 and \$2,253, and the same amounts were claimed by Debtors. The court is satisfied that Trustee's objections have been addressed, and that Debtors' Plan can be confirmed.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on September 25, 2013, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 18, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of Debtor's Plan on the basis that Debtor is delinquent \$600.00 under the proposed plan.

The case was filed November 20, 2012, and 12 payments have come due under the plan. Payments of \$14,400.00 have become due under the proposed modified plan. Debtor has paid Trustee \$13,800.00 with the last payment of \$2,300.00 posted on August 8, 2013.

Debtor's Response to Trustee's Objection

Debtor responds to Trustee's Objection to the Motion to Modify by stating that Debtor will be current under the terms of the Modified Plan, on or before the hearing date.

The court will tentatively grant Debtor's Motion to Modify, giving Debtor the opportunity to present to the court evidence that Debtor is current with the Plan. Trustee will confirm whether or not Debtor has cured the delinquency on the date of the hearing. If Debtor remains delinquent, then the court will change its tentative ruling to deny Debtor's Plan.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13
Plan filed by the Debtor having been presented

to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on October 18, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on October 24, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 14, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the Motion to Confirm the Plan on December 17 at 2:00 pm. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Trustee opposes confirmation of Debtor's Motion to Confirm the Amended Plan, based on Trustee's uncertainty as to whether Debtor can afford to make payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on the Motion to Value Collateral of Ford Motor Credit, which is set for hearing on December 17, 2013.

The court's decision is to continue the Motion to Confirm the Amended Plan December 17, 2013, so that this matter can be heard in conjunction with Debtor's continued Motion to Value Collateral, NBC-1 and an accurate determination can be made as to whether the Plan complies with 11 U.S.C. §§ 1322 and 1325(a).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13
Plan filed by the Debtor having been presented
to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the hearing on
Debtor's Motion to Confirm the Plan be
continued to December 17, 2013, to be heard in
conjunction with the Motion to Value
Collateral of Ford Motor Credit, NBC-1.